

INITIAL STATEMENT OF REASONS

CALIFORNIA SCHOOL FINANCE AUTHORITY

**Article 1.6, Sections 10170.16, 10170.17, 10170.18, 10170.19, 10170.20, 10170.21, 10170.22,
10170.23 and 10170.24 Title 4, Division 15
California Code of Regulations**

INTRODUCTION

The California School Finance Authority (Authority) is organized and operated pursuant to sections 17170 through 17199.5 of the California Education Code (Act).

Pursuant to Education Code, Section 41365, the State Legislature directed the Authority to commence administration of the Charter School Revolving Loan Fund Program (Program) with the 2013-14 fiscal year and to adopt regulations to implement the statute. Effective July 1, 2013, the Authority initiated its administration of the Program, and pursuant to Section 41365(h), the Authority adopted emergency regulations through the Office of Administrative Law's (OAL's) Emergency Rulemaking procedures, and such emergency regulations were approved by OAL on February 3, 2014 (OAL Regulatory Action # 2013-0123-02 E). In addition, pursuant to Government Code, Section 11346.1(h), on July 11, 2014, the Authority issued a Five-Day Notice, and on July 22, 2014, the Authority submitted its Five-day Notice and Finding of Emergency to OAL for purposes of a readopt of the emergency regulations. In order to establish permanent regulations for purposes of administration of the Program, the Authority is proposing permanent regulations through OAL's permanent rulemaking process and through submission of a Certificate of Compliance.

Pursuant to Education Code, Section 41365, the Program provides loans of up to \$250,000 over the lifetime of a charter school to charter schools established pursuant to Education Code, Section 47605 et seq., that are not conversions from existing public schools.

1. Specific Purpose and necessity, administrative requirement or other condition or circumstance that the amendments are intended to address.

Section 10170.16: Purpose

This section sets forth that the purpose for the Authority's administration of the Program is to provide loans to charter schools. This regulation is necessary to clarify the overall purpose and mission of the Program.

Section 10170.17: Definitions

This section sets forth definitions of key terms used in the regulations. The definitions are necessary to provide clarification of key terms used in the regulations and to ensure uniform application of the regulations.

Section 10170.18: Eligible Applicant

This section provides that applicants for the Program meet certain minimum requirements. The provisions within this section establish that eligible applicants meet the following minimum requirements: (subdivision (a)) The application is submitted by a Charter School or by a Chartering Authority; (subdivision (b)) The Charter School is established pursuant to Education Code section 47600 et seq.; (subdivision (c)) An approved charter has been awarded and is current, or, in the case of a first-year school, a charter petition has been submitted to the chartering authority showing that the school anticipates beginning operations in the upcoming fiscal year; (subdivision (d)) the charter school is incorporated, if it is applying on its own behalf; (subdivision (e)) the charter school is not a conversion from an existing public school; (subdivision (f)) the charter school has not had its charter renewed as of the date of submission of its application; (subdivision (g)) the charter school has no material legal issues; (subdivision (h)) the charter school is in compliance with all other programs administered by the Authority, if applicable; (subdivision (i)) the charter school is in good standing with its charter authorizer and in good standing with the terms of its charter; and (subdivision (j)) the Application is complete, and the Applicant provides additional information that is requested. In addition, under this section, the Authority reserves the right to deem an Applicant ineligible, if, after requesting additional information, the Applicant fails to respond in a timely manner.

The necessity for subdivisions (d), (e), and (f) is based on statute at Education Code, Sections 41365(c), and (g). The necessity for subdivision (g) is based on the Authority's acknowledgement that material legal issues pose a risk that could potentially impact the applicant's sustainability as a charter school and ability to repay the loan. The necessity for subdivision (h) is based on the Authority's acknowledgement that an applicant's failure to comply with other programs administered by the Authority poses an additional risk regarding an applicant's ability to comply with the terms of the loan agreement. The necessity for subdivision (i) is based on the Authority's acknowledgement that good standing with the chartering authority and compliance with the terms of the charter is a significant indicator as to whether a charter is in jeopardy of being revoked or not renewed, and the Authority's consistent use of this requirement in its other programs. The necessity for subdivision (j) is based on the Authority's need to apprise applicants that if additional information is needed to make an application complete, and an applicant does not provide such information, the applicant will be deemed ineligible.

The provisions within this section are also necessary to ensure uniformity in the minimum threshold for applicant eligibility, new charter schools have priority access to Program funds, and Applicants are apprised of the criteria for eligibility prior to submitting an application.

Sections 10170.19: Application Content and Submission

This section sets forth the application submission requirements, specific documents to be submitted with the application, the availability of applications on the Authority's website, and how to submit an application.

The necessity for subdivision (a) is to ensure that a standard application form is completed and that applicants certify as to the accuracy of information provided. The necessity of subdivision (b) is based on statute at Education Code, Section 41365(c). The necessity for subdivision (c) is to ensure the Authority can consider background information regarding the charter school in making a determination for a Program loan award, consistent with Section 10170.20. The necessity for subdivision (d) is to ensure the Authority can consider information regarding financial performance, organization performance, charter school leadership experience, and business planning in making a determination for a Program loan award, consistent with Section 10170.20. The necessity for subdivision (e) is based on statute at Education Code, Section 41365(c), as well as the need to inform applicants regarding the process for submitting applications and the need to ensure that each application is represented by one charter school with one CDS code.

Section 10170.20: Application Review and Evaluation/Underwriting Criteria

At subdivision (a), this section sets forth specific evaluation criteria that the Authority is required to use as a part of its determination for a loan award. These criteria include the following: (1) that the charter school meets all eligibility criteria under Section 10170.18, (2) the Applicant demonstrates the ability to repay the loan, and (3) the Applicant demonstrates that the use of loan funds will be strictly for charter school operations and financing consistent with Education Code, Section 47605 et seq. At subdivision (b), this section sets forth additional optional criteria that the Authority may use in making a Program loan determination, including: soundness of the business plan and expertise of key management; availability of other sources of funds; impact of receipt of Program funds on the receipt of public and private funds; compliance with other Authority programs; good standing in repayment of a prior Program loan; and the Authority's evaluation of supporting financial information in relation to financial soundness. At subdivision (c), this section provides for giving priority to new charter schools that are representative of four designated regions within the State, as defined in Section 10170.17 (Definitions). At subdivision (d), this section provides that in the event the Program is oversubscribed, after the priority given to new charter schools based on region, priority be given based on eligibility for "free and reduce-priced meals" in the attendance area for the grade-level equivalent district-operated school..

The necessity for subdivision (a) is based on the Authority's need to ensure that applicants meet minimum eligibility, are financially sound for purposes of repaying loans, and are using the loan funds for the purpose of operating a charter school. The necessity for subdivision (b) is based on statute at Education Code, Section 41365(d), as well as the need to consider submitted financial information and compliance with the Authority's programs in determining financial soundness for loan awards. The necessity for subdivision (c) is based on statute at Education Code, Sections 41365(d)(3) and (e). The necessity for subdivision (d) is based on the Authority's intent to direct funds to charter schools in areas having the most need, in the event the Program is oversubscribed.

The provisions within this section are also necessary in order to ensure that uniform and sound criteria are applied in the process of evaluating and selecting schools for Program loans and to ensure that Applicants are apprised of these criteria.

Section 10170.21: Loan Amount and Repayment Terms

This section sets forth the terms for repayment of Program loans, including the interest rate, the term of the loan, the maximum loan amount, and the repayment period.

The necessity for subdivisions (a) through (e) is to clarify the basis and terms for loan repayment, and is also based on statute at Education Code, Section 41365(c) and (f).

Section 10170.22: Loan Agreements

This section sets forth the parameters relating to the Loan Agreement, including, but not limited to: the stipulation that each Loan Recipient must agree to the terms and conditions of the Loan Agreement prior to release of funds; the requirement that each Loan Recipient have a valid CDS code; the actual terms and conditions to which each Loan Recipient is to agree; the requirement that the Loan Agreement include an offset and repayment schedule; and the specific steps the Authority will take in the event a charter school has insufficient funds to make its annual payment, or a charter school fails to open within the next fiscal year after receiving a loan disbursement. In addition, this section also sets forth the steps that the Authority will take in the event a charter school operated by an educational management organization, charter management organization or chartering authority is unable to pay the loan.

The necessity for subdivisions (a) through (d) is to set forth terms and conditions for a standard loan agreement that will ensure Loan Recipients meet their obligations to repay Program loans in accordance with the required payment schedule and use funds consistent with the Program's purpose. The necessity for subdivisions (e) through (g) is to ensure that the Authority is able to retrieve Program funds, as necessary, when charter schools are past due, in default, or fail to begin operations as scheduled, and is also based on statute at Education Code, Section 41365(g)(2).

Section 10170.23: Internal Controls, Audits and Conflicts of Interest

This section provides that the Authority may conduct periodic audits to ensure that Program funds are being used in accordance with the Program's purpose, Loan Recipients retain sufficient documentation to substantiate their use of Program funds, the Authority may require Loan Recipients to verify their continued eligibility, and the Authority retains the right to conduct site visits, when deemed necessary.

This section is necessary to provide the Authority with necessary internal controls to ensure that Loan Recipient's use Program funds in a manner consistent with the Program's purpose.

Section 10170.24: Funding Contingency

This section sets forth that the funding for the Program is contingent upon the availability of funds in the Charter School Revolving Loan Fund.

This section is necessary to clarify that specific Applicants may not be able to receive Program loans in the event of insufficient funds in the Charter School Revolving Loan Fund.

2. Technical, Theoretical, and/or Empirical Study, Reports, or Documents

The Authority did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the amendments to the Regulations.

3. Reasonable Alternatives to the Amendments to the Regulations and the Agency's Reasons for Rejecting those Alternatives

No other alternatives to the Regulations were presented to or considered by the Authority.

4. Reasonable Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Impact on Small Businesses

The Authority has not identified any adverse impacts nor have any adverse impacts otherwise been identified and brought the attention of the Authority that would affect businesses. In fact, the adoption of these regulations could result in greater opportunities for expansion of charter schools throughout the state since the intent of the Program is to assist new charter schools within California with meeting their start-up needs.

5. Description of Efforts to Avoid Conflict with and Duplication of Federal Regulations

Not applicable. The Authority is not a Department, Board, or Commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

6. Economic Impact Assessment

- a. The proposed regulations will unlikely have an impact on the creation or elimination of jobs within the State of California. In addition, the Authority is unaware of any reason providing Program loan funds to awardees would result in the elimination of jobs. The purpose of the proposed regulations is to set forth uniform and consistent criteria to administer a loan program that will assist charter schools in California with their start-up needs and to evaluate Applicants for Program loans. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that jobs would be created or eliminated as a result.
- b. The proposed regulations will unlikely have an impact on the creation or elimination of new businesses within the State of California. As noted above, the purpose of the proposed regulations is to set forth uniform and consistent criteria to administer a loan program that will assist charter schools in California with their start-up needs and to evaluate Applicants for Program loans. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that businesses would be created or eliminated as a result.

- c. The proposed regulations will unlikely have an impact on the expansion of businesses currently doing business within the State of California. The purpose of the proposed regulations is to set forth uniform and consistent criteria to administer a loan program that will assist charter schools in California with their start-up needs and to evaluate Applicants for Program loans.
- d. The proposed regulations are intended to assist charter schools throughout the State of California with their start-up needs, with priority given to new charter schools based on representation across four designated regions within California, and in the event the Program is oversubscribed, priority given to charter schools based on eligibility for FRPM. As such, to the extent that the awards benefit the long-term viability of charter schools and the expansion of new charter schools, the Program and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

7. Problems and Benefits

The Authority has emergency regulations for the Program, but they must be made permanent in order to effectively administer the Program on an ongoing basis. Without permanent regulations, the Authority does not have uniform standards and guidelines to administer the Program and ensure that Applications are evaluated in a consistent and fair manner, and Applicants do not have guidelines to direct them through the Application process.

The benefits of the proposed regulations are to ensure the Authority has clear and uniform standards, internal controls, and guidelines to ensure consistent and effective administration of the Program, and the public understands the expectations of the Program.

8. Significant Adverse Impact on Businesses

The regulations are designed to implement an existing statutorily authorized program to provide low interest loans to start-up charter schools to assist them in meeting financial needs in their first year of operations. Providing a low cost loan to charter schools that apply for the loan does not impose any mandatory or involuntary burdens or obligations on the loan recipients. As charter schools are the only entities affected by the regulations, the regulations have no significant adverse impact on businesses.